

HB 2005-1
(LC 4194)
WORK DRAFT NOT
EDITED
5/22/19 (JAS/)

Requested by Senator COURTNEY

**PROPOSED AMENDMENTS TO
HOUSE BILL 2005**

On page 1 of the printed bill, delete lines 6 through 19 and delete pages 2 through 15 and insert:

SECTION 1. Legislative Findings. The Legislative Assembly finds that:

(1) Employees experience a variety of caregiving obligations that interfere with work time.

(2) It is in the public interest to create a family and medical leave insurance program to provide to employees and certain other individuals compensated time off from work to care for and bond with a child during the first year after the child's birth or arrival through adoption or foster care, to provide care for a family member who has a serious health condition or to recover from an employee's or an individual's own serious health condition.

SECTION 2. Definitions. As used in sections 1 to 47 of this 2019 Act:

(1) "Alternate base year" means the last four completed calendar quarters preceding the benefit year.

(2) "Average weekly wage" means the amount calculated by the Employment Department as the state average weekly covered wage under ORS 657.150 (4)(d) as determined not more than once per year.

(3) "Base year" means the first four of the last five completed cal-

1 endar quarters preceding the benefit year.

2 (4) “Benefits” means family and medical leave insurance benefits.

3 (5) “Benefit year” means the 12-month period beginning on the first
4 day on which a covered individual’s period of family leave or medical
5 leave commences.

6 (6) “Child” means:

7 (a) A biological child, adopted child, stepchild or foster child of a
8 covered individual or of the covered individual’s spouse or domestic
9 partner;

10 (b) A person who is or was a legal ward of a covered individual or
11 of the covered individual’s spouse or domestic partner; or

12 (c) A person who was or is in a relationship of in loco parentis with
13 a covered individual or with the covered individual’s spouse or do-
14 mestic partner.

15 (7) “Committed relationship” means an exclusive relationship be-
16 tween a covered individual and the individual’s domestic partner in
17 which there is a shared responsibility for a significant measure of each
18 other’s common welfare and financial obligations.

19 (8) “Contribution” or “contributions” means the money payments
20 made by any of the following under section ?? of this 2019 Act:

21 (a) An employer;

22 (b) An eligible;

23 (c) A self- employed individual; or

24 (d) A tribal government.

25 (9) “Covered individual” means any one of the following who qualify
26 to receive family and medical leave insurance benefits:

27 (a) An eligible employee;

28 (b) A self-employed individual; or

29 (c) An employee of a tribal government.

30 (10) “Domestic partner” means an adult who is in a committed re-

1 **lationship with a covered individual.**

2 **(11) “Eligible employee” means:**

3 **(a)(A) An employee who has earned at least \$1,000 in wages during**
4 **the base year; or**

5 **(B) If an employee who has not earned at least \$1000 in wages dur-**
6 **ing the base year, an employee who has earned at least \$1000 in wages**
7 **during the alternate base year; and**

8 **(b) Who may apply for paid family and medical leave insurance**
9 **coverage under section 3 of this 2019 Act.**

10 **(12) “Eligible employee’s average weekly wage” means an amount**
11 **calculated by the Director of the Employment Department by dividing**
12 **the total wages earned by an employee during the base year by the**
13 **number of weeks in the base year.**

14 **(13)(a) “Employee” means:**

15 **(A) An individual employed for remuneration or under any contract**
16 **of hire, written or oral, express or implied, by an employer.**

17 **(B) Home care workers as defined in ORS 410.600.**

18 **(b) “Employee” does not include:**

19 **(A) An independent contractor as defined in ORS 670.600.**

20 **(B) A participant in a work training program administered under**
21 **a state or federal assistance program.**

22 **(C) A participant in a work-study program that provides students**
23 **in secondary or postsecondary educational institutions with employ-**
24 **ment opportunities for financial assistance or vocational training.**

25 **(D) A railroad worker exempted under the federal Railroad Unem-**
26 **ployment Insurance Act.**

27 **(E) A volunteer.**

28 **(14)(a) “Employer” includes:**

29 **(A) Any person that employs one or more employees working any-**
30 **where in this state, a political subdivision of this state or any county,**

1 city, district, authority, public corporation or entity, or any
2 instrumentality of a county, city, district, authority, public corpo-
3 ration or entity, organized and existing under law or charter;

4 (B) Any individual or type of organization, partnership, association,
5 limited liability company, limited liability partnership, trust, estate,
6 joint stock company, insurance company or corporation;

7 (C) The receiver trustee in bankruptcy, trustee in bankruptcy or
8 trustee or the legal representative of a deceased person who has or had
9 in its employment one or more employees; or

10 (D) Any successor of an entity described in subparagraphs (B) and
11 (C) of this paragraph.

12 (b) "Employer" does not include the federal government or a tribal
13 government.

14 (15) "Family and medical leave insurance benefits" means the
15 wage replacement benefits that are available to a covered individual
16 under section ?? of this 2019 Act or under the terms of an employer
17 plan approved under section ?? of this 2019 Act.

18 (16)(a) "Family leave" means leave taken by a covered individual
19 from work:

20 (A) To care for and bond with a child during the first year after the
21 child's birth or during the first year after the placement of the child
22 through foster care or adoption; or

23 (B) To care for a family member with a serious health condition.

24 (b) "Family leave" does not mean:

25 (A) Leave described in ORS 659A.159 (1)(d);

26 (B) Leave described in ORS 659A.159 (1)(e); or

27 (C) Leave authorized under ORS 659A.093

28 (17) "Family member" means:

29 (a) The spouse of a covered individual;

30 (b) A child of a covered individual or the child's spouse or domestic

1 partner;

2 (c) A parent of a covered individual or the parent's spouse or do-
3 mestic partner;

4 (d) A sibling or stepsibling of a covered individual or the sibling's
5 or stepsibling's spouse or domestic partner;

6 (e) A grandparent of a covered individual or the grandparent's
7 spouse or domestic partner;

8 (f) A grandchild of a covered individual or the grandchild's spouse
9 or domestic partner;

10 (g) The domestic partner of a covered individual; or

11 (h) Any individual related by blood or affinity whose close associ-
12 ation with a covered individual is the equivalent of a family relation-
13 ship.

14 (18) "Leave to address domestic violence" means leave taken for any
15 purpose described in ORS 659A.272.

16 (19) "Medical leave" means leave taken by a covered individual from
17 work made necessary by the individual's own serious health condition.

18 (20) "Parent" means:

19 (a) A biological parent, adoptive parent, stepparent or foster parent
20 of a covered individual;

21 (b) A person who was a foster parent of a covered individual when
22 the covered individual was a minor;

23 (c) A person designated as the legal guardian of a covered individual
24 at the time the covered individual was a minor or required a legal
25 guardian;

26 (d) A person with whom a covered individual was or is in a re-
27 lationship of in loco parentis; or

28 (e) A parent of a covered individual's spouse or domestic partner
29 who meets a description under paragraphs (a) to (d) of this subsection.

30 (21) "Self-employed individual" is an individual who has self-

1 employment income as defined in section 1402(b) of the Internal Rev-
2 enue Code as amended and in effect on December 31, 2018.

3 (22) "Serious health condition" has the meaning given that term in
4 ORS 659A.150.

5 (23) "Third party administrator" means a third party that enters
6 into an agreement with the Director of the Employment Department
7 to implement and administer the paid family and medical leave pro-
8 gram established under section ?? of this 2019 Act.

9 (24) "Tribal government" has the meaning given that term in ORS
10 181A.680.

11 (25) "Wages" has the meaning given that term in ORS 657.105.

12 BENEFITS

13
14
15 **SECTION 3. Benefit eligibility.** Family and medical leave insurance
16 benefits are available to any of the following during a period of family
17 leave, medical leave or leave to address domestic violence:

18 (1) An eligible employee who:

19 (a) During the base year, contributes to the Paid Family and Med-
20 ical Leave Insurance Fund established under section 39 of this 2019 Act
21 in accordance with section 16 of this 2019 Act;

22 (b) Submits a claim for benefits in accordance with the require-
23 ments under section 12 of this 2019 Act

24 (2) A self-employed individual who:

25 (a) Elects coverage under section 41 of this 2019 Act; and

26 (b) During the base year, contributes to the Paid Family and Med-
27 ical Leave Insurance Fund established under section 39 of this 2019 Act
28 an amount determined by the director under section 16 of this 2019
29 Act; or

30 (3) An employee of a tribal government that:

1 (a) Has elected coverage for its employees under section 41 of this
2 2019 Act; and

3 (b) During the base year, contributes to the Paid Family and Med-
4 ical Leave Insurance Fund established under section 39 of this 2019 Act
5 an amount determined by the director under section 16 of this 2019
6 Act.

7 **SECTION 4. Duration of benefits.** (1) An covered individual may
8 qualify for up to 12 weeks of benefits per benefit year for:

9 (a) Family leave;

10 (b) Medical leave; or

11 (c) Leave to address domestic violence.

12 (2) Notwithstanding section 5 of this 2019 Act, if a covered individ-
13 ual has exhausted all of the paid leave available under subsection (1)
14 of this section, the individual may take up to an additional four weeks
15 of unpaid leave for a purpose specified under ORS 659A.159 that does
16 not otherwise qualify for family and medical leave insurance benefits.

17 (3) When combined, the total amount of leave that a covered indi-
18 vidual may take under this section may not exceed 16 weeks per ben-
19 efit year.

20 **SECTION 5.Coordination of leave.** Any family leave or medical
21 leave taken under sections 1 to 47 of this 2019 Act must be taken
22 concurrently with any leave taken by an eligible employee under ORS
23 659A.150 to 659A.186 or under the federal Family and Medical Leave
24 Act of 1993 (P.L. 103-3) for the same purposes.

25 **SECTION 6. Other benefits; use of paid leave** (1) Family and med-
26 ical leave insurance benefits are in addition to any paid sick time ac-
27 crued under ORS 653.606, accrued vacation leave or other paid leave
28 offered by an employer.

29 (2)(a) An employer may allow an employee who has accrued paid
30 leave described under subsection (1) of this section to choose whether

1 to use such leave in lieu of receiving paid family and medical leave
2 insurance benefits for family leave, medical leave or leave to address
3 domestic violence.

4 (b) A covered individual may not receive family and medical leave
5 insurance benefits for any week in which the employee uses accrued
6 paid leave for the same purposes.

7 **SECTION 7. Amount of benefits.** (1) The amount of family and
8 medical leave insurance benefits that a covered individual qualifies for
9 shall be determined as follows:

10 (a) The Director of the Employment Department shall determine
11 the eligible employee's average weekly wage on the basis of the eligible
12 employee's wages earned during the base year.

13 (b) The director shall set the weekly benefit amount at:

14 (A) If the eligible employee's average weekly wage is less than 65
15 percent of the average weekly wage, the employee's weekly benefit
16 amount shall be 100 percent of the employee's average weekly wage.

17 (B) If the eligible employee's average weekly wage is greater than
18 65 percent of the average weekly wage, the employee's weekly benefit
19 amount is the sum of:

20 (i) 65 percent of the average weekly wage; and

21 (ii) 50 percent of the employee's average weekly wage that is greater
22 than 65 percent of the average weekly wage.

23 (2) Notwithstanding subsection (1) of this section:

24 (a) The director shall establish a maximum weekly benefit amount
25 of 120 percent of the average weekly wage.

26 (b) The minimum weekly benefit amount shall be determined as
27 provided in ORS 657.150 (4).

28 (3) The director shall determine, based on the contribution amounts
29 made by a self-employed individual or a tribal government under sec-
30 tion 16 of this 2019 Act, the amount of family and medical leave in-

1 surance benefits payable to a self-employed individual or to an
2 employee of a tribal government.

3 (4) Benefits are payable only to the extent that moneys are avail-
4 able in the Paid Family and Medical Leave Insurance Fund for that
5 purpose. The state, any political subdivision of the state or any state
6 agency is not liable for any amount in excess of this limit.

7 SECTION 8. Notice to employees. (1) An employer shall:

8 (a) Provide written notification at the time of hire and at least
9 quarterly to each employee of the amount of accrued and unused
10 family and medical leave insurance benefits that are available for use
11 by the employee. Inclusion of the amount of unused benefits on the
12 statement required under ORS 652.610 meets the requirements of this
13 paragraph.

14 (b) Provide written notice of the duties and rights of an eligible
15 employee under sections 1 to 47 of this 2019 Act to each employee in
16 accordance with rules adopted by the Director of the Employment
17 Department. The notice shall include, but need not be limited to the
18 following information:

19 (A) The right for eligible employees to apply for and receive family
20 and medical leave insurance benefits under sections 1 to 47 of this 2019
21 Act;

22 (B) The procedure for filing a claim for family and medical leave
23 insurance benefits under section 12 of this 2019 Act;

24 (C) That an eligible employee is disqualified from receiving benefits
25 for leave taken for the same purpose for which the individual uses any
26 accrued paid leave provided by the employer, including paid sick time
27 accrued under ORS 653.606 or vacation leave;

28 (D) The notice that an employee shall provide to an employer before
29 the employee commences leave as required under section 9 this 2019
30 Act.

1 (E) The right to job protection and benefits continuation under
2 section 10 of this 2019 Act;

3 (F) The right to appeal a decision or determination of Director of
4 the Employment Department as provided under section 31 of this 2019
5 Act;

6 (G) That discrimination and retaliatory personnel actions against
7 an employee for inquiring about, requesting, applying for or using
8 family and medical leave insurance benefits is prohibited;

9 (H) That an employee has a right to bring a civil action or to file
10 a complaint for violation of section 10 of this 2019 Act; and

11 (I) Health information of an employee related to any family leave,
12 medical leave or leave to address domestic violence is confidential and
13 may not be released without the permission of the employee.

14 (2) The notices provided under this section must be in the language
15 the employer typically uses to communicate with the employee.

16 (3) The director shall make available to employers a template that
17 meets the required notice provisions of this section.

18 SECTION 9. Notice to employers. (1) Except as provided in sub-
19 section (2) of this section, an employer may require an eligible em-
20 ployee to give the employer written notice at least 30 days before
21 commencing a period of family leave, medical leave or leave to address
22 domestic violence. The employer may require the employee to include
23 in the notice an explanation of the need for the leave.

24 (2) An eligible employee may commence leave without 30 days' ad-
25 vance notice if the leave is not foreseeable, including under the fol-
26 lowing circumstances:

27 (a) An unexpected serious health condition of the employee or a
28 family member of the employee; or

29 (b) A premature birth, unexpected adoption or unexpected foster
30 placement by or with the employee.

1 (3) If an eligible employee commences leave without prior notice
2 under subsection (2) of this section, the employee must give oral no-
3 tice to the employer within 24 hours of the commencement of the
4 leave, and must provide the written notice required by subsection (1)
5 of this section within three days after the commencement of leave.
6 The oral notice required by the subsection may be given by any other
7 person on behalf of the employee taking leave.

8 (4)(a) If an employee fails to give notice as required under sub-
9 sections (2) and (3) of this section, the Director of the Employment
10 Department shall reduce the first weekly benefit amount payable to
11 the employee under section 12 of this 2019 Act, by a percentage not to
12 exceed two percent.

13 (b) An employer shall notify the director of the employee's failure
14 to provide the required notice, in the manner prescribed by the direc-
15 tor by rule.

16 **SECTION 10. Employment protection; retaliation prohibited.**

17 (1)(a) Except as provided in paragraph (b) of this subsection, after
18 returning to work after a period of family leave, medical leave or leave
19 to address domestic violence, an eligible employee is entitled to be re-
20 stored to the position of employment held by the employee when the
21 leave commenced, if that position still exists, without regard to
22 whether the employer filled the position with a replacement worker
23 during the period of leave. If the position held by the employee at the
24 time leave commenced no longer exists, the employee is entitled to be
25 restored to any available equivalent position with equivalent employ-
26 ment benefits, pay and other terms and conditions of employment.

27 (b) For employers that employ fewer than 25 employees, if the po-
28 sition held by an eligible employee when a period of the employee's
29 leave commenced no longer exists, an eligible employee may be re-
30 stored to a different position with similar job duties and with the same

1 employment benefits and pay.

2 (2) During a period in which an eligible employee takes leave de-
3 scribed under subsection (1) of this section, the employer shall main-
4 tain any health care benefits the employee had prior to taking such
5 leave for the duration of the leave, as if the employee had continued
6 in employment continuously from the date the employee commenced
7 the leave until the date the family and medical leave insurance bene-
8 fits terminate.

9 (3) An eligible employee who has taken leave described under sub-
10 section (1) of this section, does not lose any employment benefits,
11 including seniority or pension rights, accrued before the date that
12 leave commenced.

13 (4) It is an unlawful employment practice to discriminate against
14 an eligible employee who has invoked any provision of sections 1 to
15 47 of this 2019 Act.

16 (5) Nothing in this section entitles an eligible employee to accrue
17 employment benefits during a period of leave or to a right, benefit or
18 position of employment other than a right, benefit or position to which
19 the employee would have been entitled had the employee not taken
20 leave.

21 (6)(a) Nothing in this section requires an employer to retain the
22 employment of a temporary worker who was hired to replace an eli-
23 gible employee after the eligible employee has returned to work after
24 taking family leave, medical leave or leave to address domestic vi-
25 olence.

26 (b) A civil action may not be maintained against an employer for
27 taking any of the following actions necessary to restore an eligible
28 employee to the position of employment held by the employee as re-
29 quired under subsection (1) of this section:

30 (A) Terminating the employment of a worker who was hired solely

1 to temporarily replace an eligible employee during a period of leave;
2 or

3 (B) Removing an employee from a position to which the employee
4 was transferred to temporarily replace an eligible employee while the
5 eligible employee was on leave, and returning the employee to the
6 position held originally by the employee prior to the transfer at the
7 salary or rate of pay and benefits associated with the position.

8 (c) An employer shall, either at the time of hire or before reas-
9 signment, inform a temporary worker or an employee who is reas-
10 signed to a position to temporarily replace an eligible employee during
11 a period of leave, of the information provided under this subsection.

12 (7) The protections provided under this section apply only to an el-
13 igible employee who was employed by the employer for at least 90 days
14 before taking leave described under subsection (1) of this section.

15 **SECTION 11. Denying leave; discrimination and retaliation prohib-**
16 **ited.**(1) It is an unlawful employment practice for an employer to:

17 (a) Violate section 10 of this 2019 Act.

18 (b) Deny leave or interfere with any other right to which a an eli-
19 gible employee is entitled under sections 1 to 47 of this 2019 Act.

20 (c) Retaliate or in any way discriminate against an employee with
21 respect to hire or tenure or any other term or condition of employ-
22 ment because the employee has inquired about the provisions of
23 sections 1 to 47 of this 2019 Act.

24 (2) An employee who alleges a violation of this section may bring
25 a civil action under ORS 659A.885 or may file a complaint with the
26 Commissioner of the Bureau of Labor and Industries in the manner
27 provided by ORS 659A.820.

28 'HEADING'

29
30 CLAIMS ADMINISTRATION

SECTION 12. Claim for benefits (1) Family and medical leave benefits are not payable to a covered individual until:

(a) The individual submits a claim to the Director of the Employment Department in the manner determined by the director by rule; and

(b) The director has made a decision to allow or deny the claim under section 13 of this 2019 Act.

(2) If the director has made a decision to allow the claim, the director shall make a reasonable effort to issue the first payment of benefits to a covered individual within two weeks after receiving the claim.

(3)(a) A claim for benefits must consist of leave that is taken by an individual in increments that are equivalent to one workday or one workweek, as those terms are defined by the director by rule.

(b) If a covered individual takes leave in increments that equal one work day, a claim may consist of leave that occurs in nonconsecutive periods of leave that, when combined, totals one work week.

(3) Benefit amounts, as determined under section 6 of this 2019 Act:

(a) Must be prorated to increments of not less than one work day; and

(b) Must be paid in increments of one workweek.

SECTION 13. Allowing or denying claim; notice of denial; appeal.

(1) The Director of the Employment Department shall promptly examine each claim for benefits and, on the basis of the facts available, make a decision to allow or deny the claim. Information furnished by the covered individual in the claim as prescribed by the director by rule, must be accompanied by a signed statement that such information is true and correct to the best of the individual's knowledge.

(2)(a) The director shall promptly give notice of a decision to allow or deny a claim.

1 (b) If the claim is denied, the written notice must include a state-
2 ment of the reasons for denial.

3 (3) A decision made under this section is final and the benefits must
4 be paid or denied accordingly. A covered individual may request review
5 of the director's decision as provided under section 31 of this 2019 Act.

6 SECTION 14. Continuous jurisdiction of director; reconsideration
7 of previous decisions. (1) Notwithstanding section 13 of this 2019 Act,
8 the Director of the Employment Department, upon motion of the di-
9 rector or upon application of covered individual, may at any time re-
10 consider any final decision under this chapter. Reconsideration may
11 occur when there is evidence of:

12 (a) Errors of computation;

13 (b) Clerical errors;

14 (c) Misinformation provided a party by the Employment Depart-
15 ment;

16 (d) Facts not previously known to the director; or

17 (e) Errors caused by misapplication of law by the department.

18 (2) Such reconsideration shall be accomplished by the director or
19 any employee the director may designate for the purpose, in accord-
20 ance with such regulations as the director may prescribe, and may
21 include the making of a new decision which, if made, shall award,
22 deny, terminate, continue, increase or decrease benefits to the extent
23 found necessary and appropriate for the correction of previous error
24 respecting such benefits. Any such new decision shall be subject to
25 review as provided under section 31 of this 2019 Act.

26 SECTION 15. Noncompliance and erroneous payments. (1) An em-
27 ployer or individual acting on behalf of an employer may not willfully
28 make or cause to be made false statements or willfully fail to report
29 a material fact regarding the claim of an eligible employee or regard-
30 ing an employee's eligibility for family and medical leave insurance

1 **benefits under sections 1 to 47 of this 2019 Act.**

2 **(2) The Director of the Employment Department may assess a civil**
3 **penalty in an amount not to exceed \$1,000 against an employer for**
4 **each occurrence that violates subsection (1) of this section.**

5 **(3) A covered individual is disqualified from family and medical**
6 **leave insurance benefits for one year if the director determines that**
7 **the covered individual willfully made a false statement or willfully**
8 **failed to report a material fact to obtain benefits under sections 1 to**
9 **47 of this 2019 Act.**

10 **(4) If benefits are paid erroneously as a result of willful misrepre-**
11 **sentation, or if a claim for benefits is rejected after benefits are paid**
12 **except for matters that have been timely appealed, the director:**

13 **(a) May seek repayment of benefits from a covered individual in a**
14 **manner prescribed by the director by rule; and**

15 **(b) May have the amount of the benefits deducted from any future**
16 **benefits otherwise payable to the individual under section 13 of this**
17 **2019 Act; and**

18 **(5) If benefits are paid in error, not due to the individual providing**
19 **a false statement or misrepresentation, the director may exercise dis-**
20 **cretion to waive, in whole or in part, the amount of any such pay-**
21 **ments where the recovery would be against equity, good conscience**
22 **or administrative efficiency.**

23 **(6) A decision of the director under this section does not authorize**
24 **the recovery of the amount of any benefits paid to a covered individual**
25 **until the decision is final and the decision specifies:**

26 **(a) That the covered individual, by reason of false statement, mis-**
27 **representation or nondisclosure, is liable to repay the amount to the**
28 **Paid Family and Medical Leave Insurance Fund established under**
29 **section 39 of this 2019 Act;**

30 **(b) The nature of the false statement, misrepresentation or**

1 nondisclosure; and

2 (c) The week or weeks for which the benefits were paid.

3 (d) Any amount subject to recovery and any penalty due under this
4 section may be collected by the director in a civil action against the
5 employer or covered individual brought in the name of the director.

6 (7 The director shall adopt rules establishing standards and proce-
7 dures for the repayment of benefits and payment of penalties and in-
8 terest under this section.

9 (8) An employer or covered individual may appeal a determination
10 made under this section as provided in section 31 of this 2019 Act.

11 'HEADING'

12 13 CONTRIBUTIONS 14

15 SECTION 16. Contributions. (1)(a) Except as otherwise provided in
16 subsection (3) of this section, all employers and eligible employees
17 shall contribute to the Paid Family and Medical Leave Insurance Fund
18 established under section 14 of this 2019 Act.

19 (b) Contributions shall be paid by employers and employees as a
20 percentage of a total rate determined by the Director of the Employ-
21 ment Department. The total rate determined by the director shall not
22 exceed one percent of employee wages the employees wages.

23 (2)(a) Employer contributions shall be made in an amount that is
24 equal to 40 percent of the total rate determined by the director.

25 (b) An employer shall deduct employee contributions from the
26 wages of each employee in an amount that is equal to 60 percent of
27 the total rate determined by the director.

28 (3)(a) Employers that employ fewer than 25 employees are not re-
29 quired to pay the employer contributions under subsection (1) of this
30 section.

1 (b) If an employer that employs fewer than 25 employees elects to
2 pay the employer contributions under subsection (1) of this section,
3 the employer may apply to receive a grant under section 12 of this 2019
4 Act.

5 (4) Notwithstanding subsection (1) of this section, an employer may
6 elect to pay the required employee contributions, in whole or in part
7 as an employer-offered benefit. An employer that pays the employee
8 contributions is not eligible to receive a grant under section 42 of this
9 2019 Act.

10 (5) Subject to section 41 (2) and (3) of this 2019 Act, a self-employed
11 individual who has elected coverage under section 41 (1) of this 2019
12 Act shall contribute to the fund at a rate that may not exceed one
13 percent of the individual's taxable income as reported for purposes of
14 ORS chapter 316 for a period of not less than three years from the date
15 that the election becomes effective.

16 (6) A tribal government that elects coverage under section 41 of this
17 2019 Act shall contribute to the fund at a rate that may not exceed one
18 percent of total wages of employees of the tribal government.

19 (7) The Director of the Employment Department shall set rates for
20 the collection of payroll contributions consistent with subsection (1)
21 of this section and in a manner such that:

22 (a) At the end of the period for which the rates are effective, the
23 balance of moneys in the fund is an amount not less than six months'
24 worth of projected expenditures from the fund for performance of the
25 functions and duties of the director under sections 1 to 47 of this 2019
26 Act; and

27 (b) The volatility of the contribution rates is minimized.

28 (8) The director shall determine on an annual basis the amount of
29 payroll contributions, timing of payroll contributions and maximum
30 employee contributions necessary to finance sections 1 to 47 of this

1 **2019 Act.**

2 (9) An employer shall hold any moneys collected under this section
3 in trust for the State of Oregon and for the payment thereof to the
4 Department of Revenue in the manner described in subsection (10) of
5 this section.

6 (10)(a) An employer shall make and file a combined quarterly report
7 of wages earned and contributions paid under this section upon a re-
8 port form prescribed by the Department of Revenue.

9 (b) The report shall be filed with the Department of Revenue on or
10 before the last day of the month following the quarter to which the
11 report relates and shall be deemed received on the date of mailing.

12 (c) The report shall be accompanied by payment of any contribu-
13 tions due under this section in a manner determined by the Depart-
14 ment of Revenue by rule.

15 (11) Moneys collected under this section shall be deposited in the
16 Paid Family Medical Leave Insurance Fund established under section
17 39 of this 2019 Act.

18 (12)(a) If an employer quits business or sells out, exchanges or
19 otherwise disposes of the business or stock of goods, any payroll con-
20 tribution payable under this section is immediately due and payable,
21 and the employer shall, within 10 calendar days, pay the payroll con-
22 tributions due. Any person who becomes a successor to the business
23 is liable for the full amount of the unpaid payroll contribution.

24 (b) The Director of the Employment Department shall adopt rules
25 for compliance with sections 1 to 47 of this 2019 Act related to contri-
26 butions from an employer's successor in interest.

27
28 **COLLECTIONS**
29

30 **SECTION 17. (1) This section applies to:**

1 (a) An employer that fails to remit to the Director of the Employ-
2 ment Department any amount of contributions due under section 16
3 of this 2019 Act;

4 (b) An individual liable to repay any amount of benefits paid under
5 sections 1 to 47 of this 2019 Act to which the individual was not enti-
6 tled; and

7 (c) A person liable under section 25 of this 2019 Act for amounts due
8 under sections 1 to 47 of this 2019 Act.

9 (2) If a judgment is rendered in favor of the director for amounts
10 described in subsection (1) of this section, the amounts shall be a lien
11 in favor of the director upon all property, whether real or personal,
12 belonging to the employer, individual or person.

13 (3) The lien shall be perfected and attach:

14 (a) To real and personal property located within the county, upon
15 the recording of a warrant, as provided in section 19 of this 2019 Act,
16 with the clerk of the county in which the property is located.

17 (b) To personal property wherever located within the state, upon:

18 (A) The recording of a warrant, as provided in section 19 of this 2019
19 Act, with the clerk of any county; and

20 (B) The filing of a copy of the warrant with the Secretary of State
21 as provided in section 18 of this 2019 Act.

22 (4) The lien created by this section may be foreclosed by a suit in
23 the circuit court in the manner provided by law for the foreclosure of
24 other liens on real or personal property.

25 SECTION 18. (1) Any warrant attaching the lien under section 17
26 of this 2019 Act may also be filed in the office of the Secretary of State.
27 Filing in the office of the Secretary of State has no effect until a copy
28 of the statement of lien or the warrant has been recorded with the
29 county clerk.

30 (2) When a copy of the statement of lien or the warrant is filed with

1 the Secretary of State in compliance with subsection (1) of this sec-
2 tion, such filing shall have the same effect with respect to personal
3 property as if the copy of the statement of lien or the warrant had
4 been duly recorded with the county clerk in each county of this state.

5 (3) A copy of the statement of lien or the warrant filed with the
6 Secretary of State shall be filed and indexed by the Secretary of State
7 in the same manner as provided under ORS 79.0501 for the filing and
8 indexing of financing statements.

9 SECTION 19. (1) In any case in which the Director of the Employ-
10 ment Department may bring a civil action for the collection of
11 amounts liable to be repaid under section 17 of this 2019 Act, interest
12 on those amounts or penalties, the director may instead issue a war-
13 rant for the amount liable to be repaid with the added interest, pen-
14 alties, collection charges and the sheriff's costs of executing the
15 warrant. A copy of the warrant shall be mailed or delivered to the
16 employer, individual or person by the department at the respective
17 last-known address.

18 (2) At any time after issuing a warrant under this section, the de-
19 partment may record the warrant in the County Clerk Lien Record of
20 any county of this state. Recording of the warrant has the effect de-
21 scribed in ORS 205.125.

22 (3) After recording a warrant, the director may direct the sheriff
23 of the county in which the warrant is recorded to levy upon and sell
24 the real and personal property, and to levy upon any currency, of the
25 employer, individual or person found within that county. The proceeds
26 or currency shall be applied against the amount reflected in the war-
27 rant and the sheriff's costs of executing the warrant.

28 (4) The sheriff shall proceed on the warrant in the same manner
29 prescribed by law for executions issued against property pursuant to
30 a judgment, and is entitled to the same fees as provided for executions

1 issued against property pursuant to a judgment. The fees of the sheriff
2 shall be added to and collected as a part of the warrant liability.

3 (5)(a) The director may direct the warrant to any agent and au-
4 thorize the agent to collect the amount reflected in the warrant.

5 (b) In the execution of the warrant the agent has all of the powers
6 conferred by law upon sheriffs but is entitled to no fee or compen-
7 sation in excess of actual expenses incurred in the execution.

8 (6) Amounts collected pursuant to this section shall be deposited in
9 the Paid Family and Medical Leave Insurance Fund established under
10 section 39 of this 2019 Act.

11 SECTION 20. (1)(a) The Director of the Employment Department
12 may release, compromise or satisfy any lien provided for in sections
13 17 and 18 of this 2019 Act by filing a notice of release or satisfaction
14 with the county clerk of the county in which the notice of lien claim
15 was filed.

16 (b) Upon filing of the notice under this subsection, the property
17 against which the lien is claimed shall be released from the lien.

18 (2) The director may include in the amount received for the release
19 of the lien any costs incurred by the director in collecting the amounts
20 due.

21 (3) Amounts collected pursuant to this section shall be deposited in
22 the Paid Family and Medical Leave Insurance Fund established under
23 section 39 of this 2019 Act.

24
25 LOCALIZATION
26

27 SECTION 21. (1) An employee's wages shall be used to make deter-
28 minations under sections 1 to 47 of this 2019 Act if the wages are
29 earned for service:

30 (a) Performed entirely within this state; or

1 (b) Performed both within and without this state, but the service
2 performed without the state is incidental to the employee's service
3 within the state.

4 (c) The service is not performed as described in paragraphs (a) and
5 (b) of this subsection in any of the United States and is not covered
6 under the laws of any state, including the Virgin Islands and Canada,
7 that has established a program substantially similar to the family and
8 medical leave insurance program established under sections 1 to 47 of
9 this 2019 Act, and:

10 (A) The base of operations of the service is in this state;

11 (B) If there is no base of operations of the service, the place from
12 which the service is directed or controlled is in this state; or

13 (C) The base of operations of the service or the place from which
14 the service is directed or controlled is not in any state in which some
15 part of the service is performed, but the employee's residence is in this
16 state.

17 (2) Service performed within this state but not described in sub-
18 section (1) of this section is subject to sections 1 to ?? of this 2019 Act
19 if contributions are not required and paid with respect to the service
20 under the laws of any other state or of the federal government for
21 purposes of a program substantially similar to the family and medical
22 leave insurance program established under sections 1 to 47 of this 2019
23 Act.

24 (3) As used in this section, "United States" includes the 50 states,
25 the District of Columbia and the Commonwealth of Puerto Rico.

26
27 PENALTIES
28

29 **SECTION 22.** (1)(a) On or before June 30 of each year, the Director
30 of the Employment Department shall send a written notice to each

1 employer that has failed to file all reports as required by the director
2 or to pay all contributions due, warning the employer about the pen-
3 alty provided in subsection (2) of this section.

4 (2) If, prior to September 1, an employer has failed to file all re-
5 quired reports and pay all contributions due, the employer shall pay
6 a penalty equal to one percent of the wages of the employer's em-
7 ployees in the preceding calendar year.

8 (3)(a) On or before October 20, the director shall assess the penalty
9 provided in subsection (2) of this section and send written notification
10 of the assessment to the employer's last known address.

11 (b) Notwithstanding paragraph (a) of this subsection, the director
12 may waive the penalty for good cause if the employer has filed the
13 required reports and payments.

14 (4) On or before November 10 following a penalty assessment under
15 subsection (2) of this section, the employer that is assessed the penalty
16 may submit a written request to the director that the penalty be
17 waived. The request must contain the specific reasons for the failure
18 to file the required reports or payments prior to September 1.

19 (5)(a) If the request for waiver of the penalty is denied, the director
20 shall notify the employer in writing of the denial. The decision deny-
21 ing the request shall become final, unless within 20 days from the date
22 the decision is sent to the employer's last known address, the em-
23 ployer files a request for a hearing in writing that states the reasons
24 for the request.

25 (b) Hearings, decisions and reconsiderations under this section shall
26 be conducted in accordance with rules adopted by the director.

27 (c) Judicial review of an order assessing a penalty under this sec-
28 tion shall be as provided for review of orders in contested cases under
29 ORS chapter 183, except that the petition must be filed within 20 days
30 after the issuance of the order of the director.

1 (6) The penalty provided in subsection (2) of this section shall be
2 collected in accordance with the provisions of sections 17 to 20 of this
3 2019 Act, and any amounts collected pursuant to this subsection shall
4 be paid to the Paid Family and Medical Leave Insurance Fund estab-
5 lished under section 39 of this 2019 Act.

6 SECTION 23. (1) If, upon satisfactory evidence, the Director of the
7 Employment Department finds it necessary for the protection of the
8 Paid Family and Medical Leave Insurance Fund established under
9 section 39 of this 2019 Act, the director may require any employer
10 subject to sections 1 to 47 of this 2019 Act, other than the state of
11 Oregon, and every state officer, board, commission, department, in-
12 stitution, branch, agency or political subdivision of this state, to de-
13 posit and keep on deposit with the director a sum equal to the
14 contributions due or estimated to be due from the employer for a pe-
15 riod of three calendar quarters.

16 (2)(a) In lieu of a deposit required under subsection (1) of this sec-
17 tion, the director may accept a bond or an irrevocable letter of credit
18 issued by an insured institution as defined in ORS 706.008 in a form
19 acceptable to the director to secure payment of contributions to be-
20 come due the fund.

21 (b) The deposit or posting of the bond or letter of credit shall not
22 relieve the employer from making contributions to the fund as pro-
23 vided under sections 16 of this 2019 Act.

24 (c) The director may at any time apply any portion of the deposit,
25 payment on the bond or the proceeds of the letter of credit to the
26 payment of any amounts due from the employer arising under sections
27 1 to 47 of this 2019 Act.

28 (3)(a) Except as provided in subsection (4) of this section, any de-
29 posit, bond or letter of credit shall be deemed for all purposes to be-
30 come the sole property of the director and shall be deposited in the

1 fund and held for the sole benefit of the fund.

2 (b) The deposit, bond or letter of credit shall be prior to all other
3 liens, claims or encumbrances and shall be exempt from any process,
4 attachment, garnishment or execution whatsoever and shall be for the
5 sole benefit of the fund.

6 (4)(a) If an employer ceases to be an employer subject to sections
7 1 to 47 of this 2019 Act, such sums as are on deposit in the fund shall
8 first be applied to any amounts due from the employer to the fund
9 under any provisions of sections 1 to 47 of this 2019 Act.

10 (b) Only upon receipt of all payments due to the fund from the
11 employer, the director shall refund to the employer all deposits re-
12 maining to the employer's credit in the fund and shall cancel any bond
13 or letter of credit given under this section.

14 (c) The employer shall have no interest in the deposit, bond or let-
15 ter of credit prior to full compliance with this section and all pro-
16 visions of sections 1 to 47 of this 2019 Act.

17 SECTION 24. (1) If an employer defaults with respect to any amount
18 of contributions required to be made by the employer to the Paid
19 Family and Medical Leave Insurance Fund established under section
20 39 of this 2019 Act, the unpaid amount, together with interest and
21 penalties, shall be collected by the Director of the Employment De-
22 partment in a civil action against the employer brought in the name
23 of the director.

24 (2)(a) Judgment rendered on the civil action in favor of the director
25 shall bear interest at the rate provided in subsection (3) of this section.

26 (b) The employer's compliance with section 16 of this 2019 Act re-
27 quiring contributions to be made to the fund, shall date from the time
28 the money was collected.

29 (c) The amount of contributions collected, together with interest
30 and penalties, shall be paid into the fund.

1 **(3)(a) Interest upon any amounts due from an employer shall be**
2 **paid and collected at the rate of one and one-half percent per month**
3 **from the date prescribed for the payment to the fund. In computing**
4 **the interest, a fraction of a month shall be counted as a full month.**

5 **(b) Interest shall be paid at the same time contributions are re-**
6 **quired to be paid by the employer to the fund.**

7 **(4) If an employer fails to pay contributions required by section 16**
8 **of this 2019 Act at the time prescribed by the director, the employer**
9 **shall be in default.**

10 **(5) If an employer that is in default with respect to payment of**
11 **contributions fails to make payment within 10 days after written de-**
12 **mand has been made by the director, the employer shall be subject to**
13 **a penalty of 10 percent of the amount of the contributions. A demand**
14 **for payment shall be deemed to have been made when deposited in the**
15 **mail addressed to the employer at the employer's last-known address**
16 **as shown by the records of the director.**

17 **(6) If any part of a deficiency is due to fraud with intent to avoid**
18 **payment of contributions to the fund, then 50 percent of the total**
19 **amount of the deficiency, in addition to the deficiency, shall be as-**
20 **sessed, collected and paid in the same manner as if it were a deficiency**
21 **and deposited in the fund.**

22 **(7) Civil actions brought in the name of the director under this**
23 **section to collect contributions, interest or penalties from an em-**
24 **ployer, shall be entitled to preference upon the calendar over all civil**
25 **cases that involve only private parties.**

26 **(8)(a) Notwithstanding the provisions of this section, the director**
27 **may agree to accept any amount the director finds reasonable under**
28 **the circumstances as consideration in settlement of the full amount**
29 **of contributions, interest or penalties due if the director finds that:**

30 **(A) The total interest collectible on the delinquent account is in**

1 excess of 25 percent of the principal;

2 (B) The employer or former employer no longer conducts an active
3 business and has insufficient net assets to pay the full amount of all
4 contributions, interest or penalties due; and

5 (C) The employer or former employer can pay some but not all of
6 the delinquent amounts.

7 (b) Whenever a settlement agreement is made pursuant to para-
8 graph (a) of this subsection, a written record signed by the director
9 shall be maintained in the files of the director. Such records shall set
10 forth:

11 (A) The name of the employer against whom the liability was as-
12 sessed;

13 (B) The amount of the assessed liability;

14 (C) The amount of the liability paid;

15 (D) The amount of the liability canceled or waived;

16 (E) A sworn statement of the employer setting forth the complete
17 financial responsibility of the employer and containing a full disclo-
18 sure of all matters bearing upon the ability of the employer to pay the
19 full amount of the liability assessed; and

20 (F) The written recommendation of an assistant to the Attorney
21 General assigned to the director that the liability be reduced in the
22 amount shown by the record.

23 (9) The director shall file a full and true copy of the record of each
24 settlement agreement with the Secretary of State as a public record.

25 (10) Any amount agreed to in settlement of the director's claims
26 on behalf of the fund made pursuant to this subsection (8)(a) of this
27 section shall be first credited to the contributions due from the em-
28 ployer until the principal amount of contributions due has been satis-
29 fied and shall be deposited in the fund.

30 SECTION 25. (1) This section applies to an individual who is one or

1 more of the following:

2 (a) An officer or employee of a corporation;

3 (b) A member or employee of a limited liability company; or

4 (c) A partner in or employee of a limited liability partnership.

5 (2) In the case of default by an employer subject to section 23 of this
6 2019 Act, an individual described in subsection (1) of this section who
7 is under a duty to perform the actions required by employers under
8 section 16 of this 2019 Act shall be personally liable for amounts due
9 under section 16 of this 2019 Act. More than one individual may be
10 jointly and severally liable under this section for amounts due.

11 (3) If the Director of the Employment Department determines that
12 an amount is due under this section, the director shall issue a notice
13 of assessment to the individual liable under this section mailed to the
14 individual's last-known address of record with the director.

15 (4) If the director has reason to believe that the person liable under
16 this section is insolvent, the director may issue a jeopardy assessment
17 as provided under section 28 (4) of this 2019 Act.

18 (5) Amounts assessed under this section may be reviewed in the
19 manner provided by section 28 (5) of this 2019 Act.

20 SECTION 26. (1) An employer may not intentionally refuse or fail
21 to pay a contribution to the Paid Family and Medical Leave Insurance
22 Fund established under section 39 of this 2019 Act or to furnish any
23 report, audit or information duly required by the Director of the Em-
24 ployment Department under sections 1 to 47 of this 2019 Act.

25 (2) An employer may not make a deduction from the wages of an
26 employee to pay any portion of the employer contributions due from
27 the employer.

28 SECTION 27. (1) If an employer fails to file a combined quarterly
29 report of wages earned and contributions paid under section 16 of this
30 2019 Act by the 10th day of the second month following the end of the

1 calendar quarter, the Director of the Employment Department, for the
2 first such failure, shall send to the employer at the employer's last-
3 known address a written notice warning the employer that a subse-
4 quent failure to file a report could result in the imposition of a late
5 filing penalty.

6 (2) If an employer, without good cause, fails to file a timely report
7 within the three-year period immediately following a written warning
8 sent pursuant to subsection (1) of this section, the employer may be
9 assessed a late filing penalty in addition to other amounts due.

10 (3) Except as provided in subsection (4) of this section, a penalty
11 assessed under subsection (2) of this section shall be 0.02 percent of the
12 wages of the employer's employees rounded to the nearest \$100.

13 (4) A penalty assessed under subsection (2) of this section for an
14 employer who has no employees during the calendar quarter to which
15 a quarterly report relates shall be as follows:

16 (a) \$10 for the first report filed late within the three-year period
17 immediately following a written notice sent pursuant to subsection (1)
18 of this section.

19 (b) \$25 for the first report filed late within the three-year period
20 immediately following the assessment of a penalty under subsection
21 (2) of this section.

22 (c) \$50 for the second report filed late within the three-year period
23 immediately following the assessment of a penalty under subsection
24 (2) of this section.

25 (d) \$100 for the third or subsequent report filed late within the
26 three-year period immediately following the assessment of a penalty
27 under subsection (2) of this section.

28 (5)(a) A penalty assessed under this section is final unless, within
29 20 days after the date the assessment is mailed to the last-known ad-
30 dress of the employer, the employer requests the penalty be deleted.

1 The request must be in writing and state the reason why the report
2 was filed late.

3 (b) If the director determines that the employer had good cause for
4 filing the report late, the penalty shall be deleted. If it is determined
5 there was not good cause for filing the report late, the request for
6 deletion shall be denied.

7 (6)(a) A determination denying the request for deletion is final un-
8 less, within 20 days after the date the determination is mailed to the
9 last-known address of the employer, the employer files a request for
10 hearing. The request for a hearing must be in writing and state the
11 reasons why the determination should not be affirmed.

12 (b) Judicial review of the determination of denial shall be as pro-
13 vided for review of orders in contested cases in ORS chapter 183, ex-
14 cept that the request for hearing shall be filed within 20 days after the
15 issuance of the determination of the director or a designated repre-
16 sentative.

17 SECTION 28. (1)(a) If an employer files a report for the purpose of
18 determining the amount of contributions due under section 16 of this
19 2019 Act but fails to pay contributions or interest, the Director of the
20 Employment Department may assess the amount of contributions or
21 interest due on the basis of the information submitted and shall give
22 written notice of the assessment to the employer mailed to the
23 employer's last-known address of record with the director.

24 (b) Notwithstanding subsection (5) of this section, if the report is
25 subsequently found to be incorrect, additional assessments may be
26 made.

27 (2) If an employer fails to file a report when required by the director
28 for the purpose of determining the amount of contributions due under
29 section 16 of this 2019 Act, the director may make an estimate based
30 upon any information of the amount of the wages of the employer's

1 employees for the period or periods for which no report was filed and
2 upon the basis of such estimate shall compute and assess the amount
3 of contributions payable by the employer. Written notice of the as-
4 sessment to the employer shall be mailed to the employer's last-known
5 address of record with the director.

6 (3) If the director is not satisfied with a report made by an employer
7 for the purpose of determining the amount of contributions due under
8 section 16 of this 2019 Act, the director may compute the amount re-
9 quired to be paid upon the basis of facts contained in the report or of
10 any information obtainable and may make an assessment of the
11 amount of the deficiency. Written notice of a deficiency assessment
12 to the employer shall be mailed to the employer's last-known address
13 of record with the director.

14 (4)(a) If the director has reason to believe that an employer or a
15 person liable under section 25 of this 2019 Act is insolvent, or that the
16 collection of any contributions will be jeopardized by delaying col-
17 lection, the director may make an immediate assessment of the esti-
18 mated amount of accrued contributions, noting upon the assessment
19 that it is a jeopardy assessment levied under this subsection, and may
20 proceed to enforce collection immediately.

21 (b)(A) Interest shall not begin to accrue on contributions collected
22 under paragraph (a) of this subsection until the due date.

23 (B) Court costs may not be charged against the employer or person
24 liable under section 25 of this 2019 Act on any action to enforce col-
25 lection commenced prior to the due date.

26 (c) In levying the assessment, the director may demand a bond or
27 deposit of such security as is necessary to ensure collection of the
28 amount of the assessment.

29 (d) Written notice of the assessment to the employer or person li-
30 able under section 25 of this 2019 Act shall be mailed to the employer's

1 or person's last-known address of record with the director.

2 (5)(a) All assessments provided for in this section shall finally fix
3 the amount of contributions due and payable unless:

4 (A) The employer or person liable under section 25 of this 2019 Act
5 applies to the director for a hearing within 20 days after the mailing
6 of the notice of assessment; or

7 (B) The director reviews the assessment prior to a decision of the
8 administrative law judge pursuant to hearing.

9 (b) An employer or person liable under section 24 and 26 of this 2019
10 Act that fails to apply for a hearing upon an assessment within the
11 time provided or, having applied, fails to appear and be heard after due
12 notice of the hearing, is precluded from raising any defense to any
13 action, suit or proceeding brought by the director for the recovery of
14 contributions based upon the assessment that could have been raised
15 in the hearing.

16 (c) The amount of contributions assessed under this section shall
17 be subject to the penalties and interest provided by sections 24 and 26
18 of this 2019 Act.

19 SECTION 29. It is unlawful for an employer or an employer's agent
20 to intentionally make or cause to be made false statements or to in-
21 tentiously fail to report a material fact regarding the claim of an
22 employee of the employer or regarding an employee's eligibility for
23 benefits under sections 1 to 47 of this 2019 Act.

24 SECTION 30. (1) In addition to any penalties otherwise prescribed
25 under sections 1 to 47 of this 2019 Act, violation of any provision of this
26 chapter is a Class A misdemeanor.

27 (2) If an offending employer is a corporation, the president, secre-
28 tary and the treasurer, or officers exercising corresponding functions,
29 are subject to the penalties in this subsection in respect to any duties
30 of which they respectively had knowledge or in the proper exercise of

1 their duties ought to have had knowledge.

2 (3) Subject to ORS 153.022, intentional violation of sections 1 to 47
3 of this 2019 Act or of any order issued or rule adopted under sections
4 1 to 47 of this 2019 Act, the violation of which is made unlawful or the
5 compliance with which is required under sections 1 to ?? of this 2019
6 Act, and for which a penalty is neither prescribed in this section nor
7 provided by any other applicable statute, is a Class C misdemeanor.
8 Each day the violation continues is considered a separate offense.

10 APPEALS

11
12 **SECTION 31. Generally.** (1) the Director of the Employment De-
13 partment shall establish a process by which an employer or a covered
14 individual may request a hearing to obtain review of a final decision
15 of the director regarding:

16 (a) Approval or denial of a claim submitted to the director for
17 payment of family and medical leave insurance benefits;

18 (b) Approval or denial of an employer's application for approval of
19 a plan under section 43 of this 2019 Act;

20 (c) The weekly benefit amount payable to a covered individual
21 benefits as determined under section 7 of this 2019 Act; or

22 (d) Disqualification from the receipt of benefits including liability
23 or repayment of benefits as determined under section 15 of this 2019
24 Act.

25 (2) Notwithstanding ORS 183.315, the process established by the di-
26 rector under this section shall comply with provisions for a contested
27 case under ORS chapter 183 and is subject to judicial review as pro-
28 vided in ORS 183.482.

29 **SECTION 32. Appeals of decisions under equivalent employer**
30 **plan.**The director shall establish by rule a nonbinding, voluntary ar-

1 **bitration procedure that a covered individual may invoke to resolve**
2 **disputes regarding a decision to approve or deny a claim for benefits**
3 **made available pursuant to a plan approved under section 43 of this**
4 **2019 Act.**

5
6 ADMINISTRATION

7
8 SECTION 33. Family and medical leave insurance program; adminis-
9 tration of program. (1) The Director of the Employment Department shall
10 establish a family and medical leave insurance program to provide family and
11 medical leave insurance benefits to a covered individual as specified in
12 sections 1 to 47 of this 2019 Act.

13 **(2) Not later than September 1, 2021, the director shall adopt rules**
14 **that are necessary to accomplish the objective under subsection (1) of**
15 **this section, including but not limited to rules that:**

16 **(b) Establish an outreach plan to gain input and disseminate infor-**
17 **mation about the program to employers and eligible employees.**

18 **(d) Establish a process to collect application fees for employers that**
19 **apply for plan approval under section 43 of this 2019 Act.**

20 **(3) The director may enter into interagency agreements to perform**
21 **the duties and functions necessary to implement and administer**
22 **sections 1 to 47 of this 2019 Act.**

23 **(4) Whenever possible, the director shall use existing employer and**
24 **public infrastructure to facilitate contributions made to the program,**
25 **maintain records, and conduct outreach.**

26 **(5) All agencies of state government, as defined in ORS 174.111, are**
27 **directed to assist the director upon request in the performance of the**
28 **director's duties under sections 1 to 47 of this 2010 Act, including but**
29 **not limited to, outreach, technical assistance and training.**

30 SECTION 34. Agreements with third party(1) The Director of the

1 Employment Department may enter into an agreement with a third
2 party to implement sections 1 to 47 of this 2019 Act and to serve as the
3 administrator of the program established under section 33 of this 2019
4 Act. The director may enter into such an agreement only on a com-
5 petitive bid basis.

6 (2) Every service provided by a third party administrator pursuant
7 to an agreement entered into under this section is subject to the same
8 requirements provided under sections 1 to 47 of this 2019 Act as if the
9 services had been provided by the director.

10 (3) A third party that enters into an agreement with the director
11 under this section is subject to oversight by the Director of the Em-
12 ployment Department.

13 (4) Costs incurred by a director pursuant to an agreement with a
14 third party administrator entered into under this section may not be
15 recovered by an increase in the contribution rate determined by the
16 director under section 16 of this 2019 Act.

17 SECTION 35. Counting employees.For purposes of sections 16 and
18 10 of this 2019 Act, the Director of the Employment Department shall
19 establish by rule a method to ascertain whether the number of em-
20 ployees employed by an employer is fewer than 25.

21 SECTION 36. Advisory committee.(1) The Director of the Employ-
22 ment Department shall establish an advisory committee to review is-
23 sues related to the implementation of and the administration of the
24 family and medical leave insurance program established under section
25 33 of this 2019 Act and rulemaking related to the program.

26 (2)(a) The advisory committee consists of nine members appointed
27 by the director as follows:

28 (A) One ex officio member who represents the department.

29 (B) Four members who represent employees.

30 (C) Four members who represent employers.

1 (b) Members shall serve for a term of two years and may be reap-
2 pointed. If there is a vacancy for any cause, the director shall make
3 an appointment to become immediately effective for the unexpired
4 term.

5 (c) The ex officio member shall serve as chairperson of the advisory
6 committee.

7 (3) The advisory committee shall advise and make recommendations
8 to the director regarding issues related to the program, including, but
9 not limited to:

10 (a) Implementation.

11 (b) Administration.

12 (c) Rulemaking.

13 (d) Emerging policy issues.

14 (4) A majority of the members of the advisory committee consti-
15 tutes a quorum for transacting business and a majority of the mem-
16 bers of the advisory committee must approve any official action.

17 (5) Members of the advisory committee are not entitled to com-
18 pensation, but may be reimbursed for actual and necessary travel and
19 other expenses the members incur in performing the members' official
20 duties. The Director of the Employment Department shall pay the ex-
21 penses out of funds appropriated to the department under section 52
22 of this 2019 Act.

23 (6) All agencies of state government, as defined in ORS 174.111, are
24 directed to assist the advisory committee in the performance of the
25 duties of the advisory committee and, to the extent permitted by laws
26 relating to confidentiality, to furnish information and advice the
27 members of the advisory committee consider necessary to perform
28 their duties.

29 SECTION 37. Records of employers; inspections. (1) Employers shall
30 maintain payroll records, including account records that document

1 employee contributions and expenses, and employment records that
2 reflect the total hours worked by all employees for the current calen-
3 dar year plus the three prior calendar years.

4 (2) The Director of the Employment Department may inspect the
5 payroll and employment records of employers for the purpose of ad-
6 ministering sections 1 to 47 of this 2019 Act. Employers must provide
7 the director with all pertinent payroll and employment records upon
8 request.

9 **SECTION 38. Confidentiality**(1) All information in the records of the
10 Employment Department or a third party administrator pertaining to
11 the administration of sections 1 to 47 of this 2019 Act:

12 (a) Is confidential and for the exclusive use and information of the
13 director in administering sections 1 to 47 of this 2019 Act;

14 (b) May not be used in any court action or in any proceeding
15 pending in the court unless the director or the State of Oregon is a
16 party to the action or proceeding or unless the action or proceeding
17 concerns the establishment, enforcement or modification of a support
18 obligation and support services are being provided by the Division of
19 Child Support of the Department of Justice or the district attorney
20 pursuant to ORS 25.080; and

21 (c) Is exempt from disclosure under ORS 192.311 to 192.478.

22 (2) At the discretion of the director and subject to an interagency
23 agreement, the director may disclose information to a public official
24 in the performance of the public official's official duties administering
25 or enforcing laws within the public official's authority and to an agent
26 or contractor of a public official. The public official shall agree to as-
27 sume responsibility for misuse of the information by the public
28 official's agent or contractor.

29 (3) At the discretion of the director, the director may disclose in-
30 formation to a contractor pursuant to a contract for actuarial ser-

vices. The contractor shall agree to assume responsibility for misuse of the information by the contractor's agent.

SECTION 39. Paid Family and Medical Leave Insurance Fund. (1) The Paid Family and Medical Leave Insurance Fund is established in the State Treasury, separate and distinct from the General Fund. The Paid Family and Medical Leave Insurance Fund is declared to be a trust fund for the uses and purposes set forth in sections 1 to 47 of this 2019 Act.

(2) The fund consists of moneys deposited in the fund from the contributions made under section 16 of this 2019 Act and may include penalties, fees, revenues or other income deposited in the fund.

(3)(a) The fund shall be used solely in the payment of benefits under sections 1 to 47 of this 2019 Act, the payment of grants awarded under section 42 of this 2019 Act and the payment of administrative costs and expenses that the Employment Department incurs in carrying out the provisions of sections 1 to 47 of this 2019 Act.

(b) The benefits shall be payable from the fund only to the extent that the contributions and moneys collected are available.

(4) Interest earned by the fund shall be credited to the fund. All moneys in the fund are continuously appropriated to the Employment Department for the purposes of carrying out the provisions of sections 1 to 47 of this 2019 Act, including the payment of family and medical leave insurance benefits under section 12 and the payment of grants awarded under section 42 of this 2019 Act.

SECTION 40. State agencies to assist with outreach, technical assistance and compliance services. The Department of Revenue, the Department of Consumer and Business Services, the Bureau of Labor and Industries and any other agency that enters into an intergovernmental agreement with the Director of the Employment Department to provide outreach, technical assistance or compliance services shall

1 collaborate to provide the outreach, technical assistance or compliance
2 services to the department.

3 **‘HEADING’**

4
5 **ELECTIVE COVERAGE**
6

7 **SECTION 41.** (1) A self-employed individual may elect to be covered
8 under sections 1 to 47 of this 2019 Act. The self-employed individual
9 must file a notice of election in writing with the Director of the Em-
10 ployment Department, as required by the director, and contribute to
11 the Paid Family and Medical Leave Insurance Fund established under
12 section 41 of this 2019 Act in a manner determined by the director by
13 rule. The election becomes effective on the date the notice is filed. The
14 self-employed individual must agree to supply any information con-
15 cerning taxable income that the director deems necessary.

16 (2) Subject to section 16 of this 2019 Act, a self-employed individual
17 who has elected coverage may terminate coverage at times the direc-
18 tor may prescribe by rule, including at the time of a change in the
19 self-employed individual’s employment status, by filing written notice
20 with the director. The termination may not take effect sooner than
21 30 days after filing the notice.

22 (3) Notwithstanding subsection (2) of this section, a self-employed
23 individual who has elected coverage may terminate coverage on the
24 date of filing of a voluntary or involuntary bankruptcy petition. The
25 self-employed individual’s elective coverage terminates on the date on
26 which the self-employed individual provides to the director documen-
27 tation to support the self-employed individual’s filing of the bank-
28 ruptcy petition and files written notice with the director. At any time
29 thereafter, the self-employed individual may re-elect coverage under
30 this section.

1 (4) A tribal government may elect to be covered under sections 1
2 to 47 of this 2019 Act in the same manner as provided in subsections
3 (1) to (3) of this section.

4 (5) The director shall prescribe by rule the method for collecting
5 contributions from self-employed individuals and tribal governments
6 and overpayments of benefits to self-employed individuals and em-
7 ployees of tribal governments. 'HEADING'

8
9 EMPLOYER ASSISTANCE
10

11 SECTION 42. Employer assistance. (1) Except as provided in sub-
12 section (2) of this section, employers that employ fewer than 25 em-
13 ployees and that make the required contributions under section 16 of
14 this 2019 Act may apply to the Employment Department to receive one
15 of the following grants:

16 (a) If the employer hires a temporary worker to replace an eligible
17 employee who takes family leave, medical leave or leave to address
18 domestic violence for a period of seven or more days, a grant of up to
19 \$3,000.

20 (b) A grant of up to \$1,000 as reimbursement for significant addi-
21 tional wage-related costs incurred during a period in which an eligible
22 employee takes leave described under paragraph (a) of this subsection.

23 (2) In addition to a grant received under subsection (1)(b) of this
24 section, an employer may receive a grant in the amount of the differ-
25 ence between the grant awarded and \$3,000 if:

26 (a) After the commencement of a period of family leave, medical
27 leave or leave to address domestic violence taken by an eligible em-
28 ployee, the employee extends the period of leave beyond the employee's
29 initial expected period of leave; and

30 (b) The employer hired a temporary worker to replace the eligible

1 employee during the employee's period of leave.

2 (3) An employer may apply for a grant under subsection (1) of this
3 section not more than 10 times per calendar year and not more than
4 once for each eligible employee who takes leave under section 4 of this
5 2019 Act.

6 (4) To be eligible for a grant under this section, an employer shall
7 provide to the director written documentation showing that the em-
8 ployer hired a temporary worker or demonstrating that the wage-
9 related costs incurred are due to an eligible employee's use of family
10 or medical leave.

11 (5) The grants awarded under this section must be funded from the
12 Paid Family and Medical Leave Insurance Fund established under
13 section 39 of this 2019 Act.

14 (6) The Director of the Employment Department shall adopt any
15 rules necessary to implement this section. 'HEADING'

16
17 EQUIVALENT EMPLOYER PLANS
18

19 SECTION 43. Equivalent employer plans, generally(1)(a) An em-
20 ployer may apply to the Director of the Employment Department for
21 approval of an employer-offered benefit plan that provides family and
22 medical leave insurance benefits to the employer's employees.

23 (b) An employer that seeks approval of a plan shall submit an ap-
24 plication to the director in the form and manner prescribed by the
25 director by rule, accompanied by an application fee not to exceed \$250.

26 (2) The director shall review and approve application for a plan if
27 the department finds that:

28 (a) The plan is made available to all employees following a period
29 of continuous employment with an employer for 30 days.

30 (b) The benefits afforded to the employees covered under the plan

1 are equal to or greater than the weekly benefits and the duration of
2 leave that an eligible employee would qualify for under sections 1 to
3 47 of this 2019 Act.

4 (3)(a) At a minimum, an employer that has received approval of a
5 plan under this section, shall make the plan available to all eligible
6 employees who have been employed by the employer for 30 days.

7 (b) An employer may make the plan available to employees who
8 have been employed by the employer for less than 30 days but in no
9 event may an employer require an employee to have been employed
10 by the employer for more than 30 days to be eligible for coverage under
11 the plan.

12 (4) Neither an employer that provides family and medical leave in-
13 surance benefits under an approved plan nor an employee covered
14 under such a plan is required to make the contributions under section
15 16 of this 2019 Act.

16 (5)(a) An employer may assume all or a part of the cost of financing
17 a plan approved under this section.

18 (b) An employer may deduct employee contributions from the wages
19 of an employee to finance the costs of the plan, except that any con-
20 tribution amounts deducted may not exceed the amount that an eli-
21 gible employee would be required to contribute under section 16 of this
22 2019 Act.

23 (c) Employee contributions received or retained by an employer
24 under this subsection must be used for plan expenses and are not
25 considered to be a part of an employer's assets.

26 (6) For employers that employ 25 or more employees, after an em-
27 ployee returns to work after a period of family leave, medical leave
28 or leave to address domestic violence, the employee is entitled to be
29 restored to the position of employment held by the employee when the
30 employee's leave commenced, if that position still exists, or if the po-

1 sition no longer exists, to be restored to any available equivalent po-
2 sition with equivalent employment benefits, pay and other terms and
3 conditions of employment.

4 (7) An employer that offers a plan that has been approved under
5 this section:

6 (a) May not retaliate or in any way discriminate against an em-
7 ployee with respect to hire or tenure or any other term or condition
8 of employment because the employee has inquired about or invoked
9 the benefits made available to the employee under the plan.

10 (b) Shall maintain, for the duration of a period of family leave or
11 medical leave or leave to address domestic violence taken by an em-
12 ployee, any health care benefits to which the employee was entitled
13 prior to taking such leave, as if the employee had continued in em-
14 ployment continuously from the date the employee commenced the
15 leave until the date the family and medical leave insurance benefits
16 terminate.

17 (8) Any paid sick leave accrued under ORS 653.606 is in addition to
18 the family and medical leave benefits made available under a plan that
19 has been approved under this section and is in addition to any other
20 employer provided benefits.

21 (9) An employee who takes leave pursuant to a plan approved under
22 this section, shall provide notice to an employer of such leave in the
23 same manner as provided in section 9 of this 2019 Act.

24 (10) A plan approved under this section shall remain in effect for a
25 period of not less than one year.

26 (11)(a) Except as provided in subsection (12) of this section, an em-
27 ployer shall resubmit an application to the department for reapproval
28 of the plan for a three-year period immediately following the director's
29 initial approval of a plan.

30 (b) After expiration of the three-year period, an employer need not

1 submit an application for reapproval of the plan unless the employer
2 has made changes to the plan that were not previously considered by
3 the department in an original or resubmitted application.

4 (12) An employer may elect to withdraw a plan at any time after
5 the plan has been in effect for one year in the manner specified by the
6 director by rule.

7 (13) If an employer elects to withdraw from a plan, any deductions
8 made from the wages of an employee that remain in possession of the
9 employer upon the employer's withdrawal of the plan shall be disposed
10 of as required by the director by rule.

11 (14)(a) Nothing in this section prohibits an employee, who is other-
12 wise eligible, from applying for coverage under the program estab-
13 lished under section 33 of this 2019, or a separate employer-offered
14 benefit plan that has been approved under this section.

15 (b) The director of the department shall adopt rules to prevent du-
16 plication of benefits to an employee who is covered under more than
17 one employer-offered plan or who has additional coverage under the
18 program established under section 33 of this 2019 Act. At a minimum,
19 the rules shall require that the benefits made available shall be pro-
20 rated under each respective plan.

21 (15)(a) A plan that has been approved under this section shall be
22 subject to the Insurance Code under chapter 731 unless otherwise ex-
23 empt under ORS 731.

24 (b) The department shall establish by rule criteria for examining
25 plans provided by an employer that is self-insured or otherwise exempt
26 from the requirements of the Insurance Code, including but not lim-
27 ited to, criteria for assessing the employer's financial solvency.

28 (16) An employer that offers a plan approved under this section
29 shall:

30 (a) Be subject to the same requirements provided in sections 10, and

1 11 of this 2019 Act;

2 (b) Maintain all reports, information and records relating to the
3 plan, including payroll and account records that document employee
4 contributions and expenses, in the manner established by the director
5 of the department by rule; and

6 (c) Provide written notice to employees that includes:

7 (A) Information about the paid family and medical leave insurance
8 benefits available under an approved plan, including the duration of
9 leave;

10 (B) The process for filing a claim to receive paid family and medical
11 leave benefits under the plan;

12 (C) The process for employee deductions used to finance the costs
13 of the plan, if any;

14 (D) An employee's right to dispute a benefit determination under
15 section 32 of this 2019 Act;

16 (E) The right to job protection and benefits continuation, if appli-
17 cable;

18 (F) A statement that discrimination and retaliatory personnel
19 actions against an individual for inquiring about, requesting or using
20 family and medical leave insurance benefits is prohibited; and

21 (17) If the monies collected from the application fee are insufficient
22 to cover the expenses incurred by the department in reviewing appli-
23 cations and administering this section, the department may adjust, as
24 often as necessary or appropriate, the application fee required under
25 subsection (1) of this section to cover such costs.

26 (18)(a) At such times as may be established by the director by rule,
27 the director shall review the benefits provided under a plan that has
28 been approved under this section.

29 (b) Based on the review, the director shall determine whether the
30 employer's plan provides benefits that are equal to or greater than the

1 benefits that would be available to eligible employees under the paid
2 family and medical leave insurance program established under section
3 33 of this 2019 Act.

4 (c) If the director determines that the plan does not provide benefits
5 in compliance with requirements under subsection (2) of this section,
6 the director shall terminate the plan and the employer shall be re-
7 quired to make the employer contributions and deduct employee con-
8 tributions in accordance with section 16 of this 2019 Act.

9 (19) An employer whose application for plan approval was denied
10 by the director may request review of the decision as provided in sec-
11 tion 31 of this 2019 Act.

12 SECTION 44.Equivalent employer plan - Gap coverage.(1) An em-
13 ployee who was a covered individual under the program established
14 under section 33 of this 2019 Act, retains status as a covered individual
15 under the program until such time as the individual qualifies for cov-
16 erage under an employer-offered plan approved under section 43 of this
17 2019 Act.

18 (2)(a) An employee who has ceased to be covered by a plan approved
19 under section 43 of this 2019 Act, is, if otherwise eligible, immediately
20 qualified to receive benefits under the program established under sec-
21 tion 33 of this 2019 Act.

22 (b) Notwithstanding section 43 (3) of this 2019 Act, an employee who
23 was eligible for benefits under an employer plan approved under sec-
24 tion 43 of this 2019 Act, is immediately eligible for benefits under a
25 plan that is offered by a new employer and that has been approved
26 under section 43 of this 2019 Act.

27 (c) For purposes of this subsection, an employee has ceased to be
28 covered by an approved plan if:

29 (A) Any family leave or medical leave taken by the employee com-
30 mences after the employee has separated from employment with an

1 employer that offered a plan under this section; or

2 (B) The employer has withdrawn from a plan as provided under
3 section 43 of this 2019 Act.

4 (C) The director has terminated the plan under section 43 (18) of
5 this 2019 Act.

6 **SECTION 45. Employer plan - Successor employers** (1) A plan that
7 has been approved under section 43 of this 2019 Act and that is in effect
8 at the time a successor acquires the organization, trade or business,
9 or substantially all the assets of the organization, trade or business
10 or a distinct and severable portion of the organization, trade or busi-
11 ness, and continues its operation without substantial reduction of
12 personnel resulting from the acquisition, must continue the plan and
13 may not withdraw the plan without a specific request for withdrawal
14 in a manner prescribed by the director by rule.

15 (2) A successor may terminate a plan with notice to the Director
16 of the Employment Department and to all employees without a request
17 to withdraw the plan within ninety days from the date of acquisition.

18 'HEADING'

19 20 REPORTS AND REVIEWS 21

22 **SECTION 46. Department review of employer equivalent plans**

23 Beginning _____ and for three consecutive years thereafter, the
24 Director of the Employment Department shall conduct a review of the
25 expenses incurred by the department in reviewing plans for approval
26 under section 43 of this 2019 Act, including an analysis of adequacy of
27 the application fee determined by the department and administrative
28 expenses related to request for review of determinations regarding
29 approval or denial of applications as provided under section 31 of this
30 2019 Act.

1 **SECTION 47. Reports** (1)(a) The Director of the Employment De-
2 partment shall submit to the interim committees of the Legislative
3 Assembly related to workforce or business and labor, in the manner
4 provided in ORS 192.245, reports summarizing the department's
5 progress toward implementing a family and medical leave insurance
6 benefits program described in sections 1 to ?? of this 2019 Act.

7 (b) The director shall submit the first report not later than Febru-
8 ary 15, 2020 and a second report not later than September 1, 2021.

9 (2)(a) Beginning on July 1, 2023, and once during each biennium
10 thereafter, the director shall submit to the interim committees of the
11 Legislative Assembly related to workforce or business and labor, in the
12 manner provided in ORS 192.245, a report that includes:

13 (A) The total number of claims submitted under section 12 of this
14 2019 Act.

15 (B) The number of claims approved under section 13 of this 2019 Act
16 and the number of claims denied under section 13 of this 2019 Act.

17 (C) The total amount of benefits paid out of the Paid Family and
18 Medical Leave Insurance Fund established under section 39 of this 2019
19 Act.

20 (D) Data regarding the use of moneys in the fund, the solvency of
21 the fund and the balance of the fund.

22 (E) The amount of contributions collected under section 16 of this
23 2019 Act.

24 (b) The director shall include in the report described in this sub-
25 section any recommendations made by the advisory committee under
26 section 36 of this 2019 Act.

27 **SECTION 48.** ORS 657.100 is amended to read:

28 657.100. (1) An individual is deemed "unemployed" in any week during
29 which the individual performs no services and with respect to which no
30 remuneration for services performed is paid or payable to the individual, or

1 in any week of less than full-time work if the remuneration paid or payable
2 to the individual for services performed during the week is less than the
3 individual's weekly benefit amount.

4 (2) For the purposes of ORS 657.155 (1), an individual who performs full-
5 time services in any week for an employing unit is not unemployed even
6 though remuneration is neither paid nor payable to the individual for the
7 services performed; however, nothing in this subsection shall prevent an in-
8 dividual from meeting the definition of "unemployed" as used in this section
9 solely by reason of the individual's performance of volunteer services with-
10 out remuneration for a charitable institution or a governmental entity.

11 **(3) An individual may not be deemed "unemployed" under this sec-**
12 **tion for any week in which the individual is receiving family and**
13 **medical leave insurance benefits under sections 1 to 14 of this 2019 Act.**

14 [(3)] (4) The Director of the Employment Department shall prescribe rules
15 as the director deems necessary with respect to the various types of unem-
16 ployment.

17 **SECTION 49.** ORS 657.471 is amended to read:

18 657.471. (1) Except as otherwise provided in this section, benefits paid to
19 an eligible individual shall be charged to each of the individual's employers
20 during the base year in the same proportion that the wages paid by each
21 employer to the individual during the base year bear to the wages paid by
22 all employers to that individual during that year.

23 (2) The account of an employer, other than a political subdivision electing
24 to pay taxes under ORS 657.509, may not be charged with benefits paid an
25 unemployed individual in excess of one-third of the base year wages paid that
26 individual while in the employ of the employer.

27 (3) Benefits paid to an individual for unemployment immediately after the
28 expiration of a period of disqualification for having left the employment of
29 an employer voluntarily without good cause may not be charged to the em-
30 ployer.

1 (4) Benefits paid to an individual for unemployment immediately after the
2 expiration of a period of disqualification for having been discharged by an
3 employer for misconduct may not be charged to the employer.

4 (5) Benefits paid without any disqualification to an individual may not
5 be charged to an employer of the individual for the immediate period of un-
6 employment if:

7 (a) The individual left the employment of the employer voluntarily for
8 good cause not attributable to the employer; or

9 (b) The employer discharged the individual because the individual was
10 unable to satisfy a job prerequisite required by law or administrative rule.

11 (6) If it is determined under the provisions of subsection (3), (4) or (5) of
12 this section that benefits paid to an individual may not be charged to an
13 employer, the employer's account may not be charged for any benefits paid
14 for any subsequent period or periods of unemployment during the individual's
15 affected benefit year or during any benefit year beginning within 52 weeks
16 subsequent to the affected benefit year.

17 (7)(a) A base-year employer that is not otherwise eligible for relief of
18 charges for benefits under this section and that receives notification of an
19 initial valid determination of a claim may request relief of charges if the
20 claim is made by an individual who:

21 (A) Left the employment of the employer voluntarily and not for reasons
22 attributable to the employer;

23 (B) Was disqualified for the individual's most recent separation from the
24 employer by a determination of the Director of the Employment Department
25 that the individual has been discharged for misconduct connected with the
26 employment for the employer; or

27 (C) Was discharged for reasons that would be disqualifying under ORS
28 657.176 (2)(a), (b), (f), (g) or (h).

29 (b)(A) A request under paragraph (a)(A) of this subsection:

30 (i) Must advise the director in writing of the date on which the individual

1 left employment, state that the individual left voluntarily and not for reasons
2 attributable to the employer and give the reason for which the individual left
3 employment.

4 (ii) May not be granted if the individual was reemployed by the employer
5 prior to the filing of the initial valid claim.

6 (B) A request under paragraph (a)(C) of this subsection must specify the
7 date of the discharge and the reasons why the employer believes the dis-
8 charge was for reasons that would be disqualifying under ORS 657.176 (2)(a),
9 (b), (f), (g) or (h).

10 (c) A request for relief under this subsection must be sent to the depart-
11 ment within 30 days after the date on which the notice provided for under
12 ORS 657.266 is mailed or delivered to the employer.

13 (d) Upon receipt of the request from the employer, the director shall re-
14 view the information provided by the employer and determine whether the
15 employer is entitled to relief of charges for benefits paid to the individual
16 during the benefit year. If the director determines that the employer is en-
17 titled to relief of charges, the director shall grant the relief.

18 (e)(A) The determination of the director under paragraph (a)(A) and (C)
19 of this subsection is final in all cases unless an application for hearing is
20 filed within 20 days after delivery of the determination, or, if mailed, within
21 20 days after the determination was mailed to the employer's last-known
22 address.

23 (B) When a request for hearing has been timely filed, an administrative
24 law judge shall be assigned to conduct a hearing.

25 (C) After the administrative law judge has afforded all parties an oppor-
26 tunity for a fair hearing, the administrative law judge shall affirm or reverse
27 the determination and promptly notify all parties entitled to notice of the
28 decision and the reasons for the decision.

29 (D) Decisions of the administrative law judge under this subsection are
30 final and may be judicially reviewed as provided in ORS 657.684 to the extent

1 applicable.

2 (8)(a) If the director finds that an employer or the employer's agent, in
3 submitting facts under subsection (7) of this section, willfully makes a false
4 statement or representation or willfully fails to report a material fact con-
5 cerning the termination of an individual's employment, the director shall
6 make a determination charging the employer's reserve account not less than
7 two nor more than 10 times the weekly benefit amount of the claimant or
8 claimants.

9 (b) The director shall give notice to the employer of the determination
10 under this subsection and the determination of the director is final unless
11 an application for hearing is filed in the manner provided for in subsection
12 (7)(e) of this section.

13 (9) Benefits paid to an individual may not be charged to a base-year em-
14 ployer if:

15 (a) The employer furnished part-time work to the individual during the
16 base year;

17 (b) The individual has become eligible for benefits because of loss of em-
18 ployment with one or more other employers;

19 (c) The employer has continued to furnish part-time work to the individ-
20 ual in substantially the same amount as during the individual's base year;
21 and

22 (d) The employer requests relief of charges within 30 days of the date the
23 notice provided for in ORS 657.266 is mailed or delivered to the employer.

24 **(10) Benefits paid to an individual for unemployment due to the**
25 **return of a covered individual, as defined in section 2 of this 2019 Act,**
26 **who was temporarily replaced by the individual for a period of family**
27 **leave, medical leave or leave to address domestic violence under**
28 **sections 1 to ?? of this 2019 Act may not be charged to the employer**
29 **of the covered individual.**

30 [(10)] (11) Notwithstanding any other provision of this section, benefits

1 paid to an individual shall be charged to an employer's account if:

2 (a) The employer or the employer's agent fails to respond timely or ade-
3 quately to a request from the Employment Department for information re-
4 lating to the claim for benefits;

5 (b) The failure to respond causes an overpayment of benefits to the
6 claimant; and

7 (c) The employer or the employer's agent has a pattern of failing to re-
8 spond timely or adequately to requests from the department for information
9 relating to claims for benefits.

10 **SECTION 50.** ORS 659A.885, as amended by section 9, chapter 197,
11 Oregon Laws 2017, and section 13, chapter 691, Oregon Laws 2017, is
12 amended to read:

13 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice
14 specified in subsection (2) of this section may file a civil action in circuit
15 court. In any action under this subsection, the court may order injunctive
16 relief and any other equitable relief that may be appropriate, including but
17 not limited to reinstatement or the hiring of employees with or without back
18 pay. A court may order back pay in an action under this subsection only for
19 the two-year period immediately preceding the filing of a complaint under
20 ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries,
21 or if a complaint was not filed before the action was commenced, the two-
22 year period immediately preceding the filing of the action. In any action
23 under this subsection, the court may allow the prevailing party costs and
24 reasonable attorney fees at trial and on appeal. Except as provided in sub-
25 section (3) of this section:

26 (a) The judge shall determine the facts in an action under this subsection;
27 and

28 (b) Upon any appeal of a judgment in an action under this subsection, the
29 appellate court shall review the judgment pursuant to the standard estab-
30 lished by ORS 19.415 (3).

(2) An action may be brought under subsection (1) of this section alleging a violation of:

(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355 or 659A.421 **or section 10 of this 2019 Act**; or

(b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.355 or 659A.421 **or section 10 of this 2019 Act**:

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater, and punitive damages;

(b) At the request of any party, the action shall be tried to a jury;

(c) Upon appeal of any judgment finding a violation, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1); and

(d) Any attorney fee agreement shall be subject to approval by the court.

(4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a violation of ORS 652.220, the court may award punitive damages if:

(a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted with malice or acted with willful and wanton mis-

1 conduct; or

2 (b) An employer was previously adjudicated in a proceeding under this
3 section or under ORS 659A.850 for a violation of ORS 652.220.

4 (5) In any action under subsection (1) of this section alleging a violation
5 of ORS 653.060, the court may award, in addition to the relief authorized
6 under subsection (1) of this section, compensatory damages or \$200, which-
7 ever is greater.

8 (6) In any action under subsection (1) of this section alleging a violation
9 of ORS 171.120, 476.574 or 659A.218, the court may award, in addition to the
10 relief authorized under subsection (1) of this section, compensatory damages
11 or \$250, whichever is greater.

12 (7) In any action under subsection (1) of this section alleging a violation
13 of ORS 10.090 or 10.092, the court may award, in addition to the relief au-
14 thorized under subsection (1) of this section, a civil penalty in the amount
15 of \$720.

16 (8) Any individual against whom any distinction, discrimination or re-
17 striction on account of race, color, religion, sex, sexual orientation, national
18 origin, marital status or age, if the individual is 18 years of age or older,
19 has been made by any place of public accommodation, as defined in ORS
20 659A.400, by any employee or person acting on behalf of the place or by any
21 person aiding or abetting the place or person in violation of ORS 659A.406
22 may bring an action against the operator or manager of the place, the em-
23 ployee or person acting on behalf of the place or the aider or abettor of the
24 place or person. Notwithstanding subsection (1) of this section, in an action
25 under this subsection:

26 (a) The court may award, in addition to the relief authorized under sub-
27 section (1) of this section, compensatory and punitive damages;

28 (b) The operator or manager of the place of public accommodation, the
29 employee or person acting on behalf of the place, and any aider or abettor
30 shall be jointly and severally liable for all damages awarded in the action;

1 (c) At the request of any party, the action shall be tried to a jury;

2 (d) The court shall award reasonable attorney fees to a prevailing
3 plaintiff;

4 (e) The court may award reasonable attorney fees and expert witness fees
5 incurred by a defendant who prevails only if the court determines that the
6 plaintiff had no objectively reasonable basis for asserting a claim or no
7 reasonable basis for appealing an adverse decision of a trial court; and

8 (f) Upon any appeal of a judgment under this subsection, the appellate
9 court shall review the judgment pursuant to the standard established by ORS
10 19.415 (1).

11 (9) When the commissioner or the Attorney General has reasonable cause
12 to believe that a person or group of persons is engaged in a pattern or
13 practice of resistance to the rights protected by ORS 659A.145 or 659A.421
14 or federal housing law, or that a group of persons has been denied any of the
15 rights protected by ORS 659A.145 or 659A.421 or federal housing law, the
16 commissioner or the Attorney General may file a civil action on behalf of
17 the aggrieved persons in the same manner as a person or group of persons
18 may file a civil action under this section. In a civil action filed under this
19 subsection, the court may assess against the respondent, in addition to the
20 relief authorized under subsections (1) and (3) of this section, a civil penalty:

21 (a) In an amount not exceeding \$50,000 for a first violation; and

22 (b) In an amount not exceeding \$100,000 for any subsequent violation.

23 (10) In any action under subsection (1) of this section alleging a violation
24 of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing
25 law, when the commissioner is pursuing the action on behalf of an aggrieved
26 complainant, the court shall award reasonable attorney fees to the commis-
27 sioner if the commissioner prevails in the action. The court may award rea-
28 sonable attorney fees and expert witness fees incurred by a defendant that
29 prevails in the action if the court determines that the commissioner had no
30 objectively reasonable basis for asserting the claim or for appealing an ad-

verse decision of the trial court.

(11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145 or 659A.421 or discrimination under federal housing law:

(a) “Aggrieved person” includes a person who believes that the person:

(A) Has been injured by an unlawful practice or discriminatory housing practice; or

(B) Will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(b) An aggrieved person in regard to issues to be determined in an action may intervene as of right in the action. The Attorney General may intervene in the action if the Attorney General certifies that the case is of general public importance. The court may allow an intervenor prevailing party costs and reasonable attorney fees at trial and on appeal.

SECTION 51. ORS 659A.885, as amended by sections 9 and 10, chapter 197, Oregon Laws 2017, and section 13, chapter 691, Oregon Laws 2017, is amended to read:

659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in subsection (2) of this section may file a civil action in circuit court. In any action under this subsection, the court may order injunctive relief and any other equitable relief that may be appropriate, including but not limited to reinstatement or the hiring of employees with or without back pay. A court may order back pay in an action under this subsection only for the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year period immediately preceding the filing of the action. In any action under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as provided in subsection (3) of this section:

(a) The judge shall determine the facts in an action under this subsection;
and

(b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (3).

(2) An action may be brought under subsection (1) of this section alleging a violation of:

(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.357 or 659A.421 **or section 10 of this 2019 Act**; or

(b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.355, 659A.357 or 659A.421 **or section 10 of this 2019 Act**:

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater, and punitive damages;

(b) At the request of any party, the action shall be tried to a jury;

(c) Upon appeal of any judgment finding a violation, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1); and

(d) Any attorney fee agreement shall be subject to approval by the court.

1 (4) Notwithstanding ORS 31.730, in an action under subsection (1) of this
2 section alleging a violation of ORS 652.220, the court may award punitive
3 damages if:

4 (a) It is proved by clear and convincing evidence that an employer has
5 engaged in fraud, acted with malice or acted with willful and wanton mis-
6 conduct; or

7 (b) An employer was previously adjudicated in a proceeding under this
8 section or under ORS 659A.850 for a violation of ORS 652.220.

9 (5) In any action under subsection (1) of this section alleging a violation
10 of ORS 653.060, the court may award, in addition to the relief authorized
11 under subsection (1) of this section, compensatory damages or \$200, which-
12 ever is greater.

13 (6) In any action under subsection (1) of this section alleging a violation
14 of ORS 171.120, 476.574 or 659A.218, the court may award, in addition to the
15 relief authorized under subsection (1) of this section, compensatory damages
16 or \$250, whichever is greater.

17 (7) In any action under subsection (1) of this section alleging a violation
18 of ORS 10.090 or 10.092, the court may award, in addition to the relief au-
19 thorized under subsection (1) of this section, a civil penalty in the amount
20 of \$720.

21 (8) Any individual against whom any distinction, discrimination or re-
22 striction on account of race, color, religion, sex, sexual orientation, national
23 origin, marital status or age, if the individual is 18 years of age or older,
24 has been made by any place of public accommodation, as defined in ORS
25 659A.400, by any employee or person acting on behalf of the place or by any
26 person aiding or abetting the place or person in violation of ORS 659A.406
27 may bring an action against the operator or manager of the place, the em-
28 ployee or person acting on behalf of the place or the aider or abettor of the
29 place or person. Notwithstanding subsection (1) of this section, in an action
30 under this subsection:

1 (a) The court may award, in addition to the relief authorized under sub-
2 section (1) of this section, compensatory and punitive damages;

3 (b) The operator or manager of the place of public accommodation, the
4 employee or person acting on behalf of the place, and any aider or abettor
5 shall be jointly and severally liable for all damages awarded in the action;

6 (c) At the request of any party, the action shall be tried to a jury;

7 (d) The court shall award reasonable attorney fees to a prevailing
8 plaintiff;

9 (e) The court may award reasonable attorney fees and expert witness fees
10 incurred by a defendant who prevails only if the court determines that the
11 plaintiff had no objectively reasonable basis for asserting a claim or no
12 reasonable basis for appealing an adverse decision of a trial court; and

13 (f) Upon any appeal of a judgment under this subsection, the appellate
14 court shall review the judgment pursuant to the standard established by ORS
15 19.415 (1).

16 (9) When the commissioner or the Attorney General has reasonable cause
17 to believe that a person or group of persons is engaged in a pattern or
18 practice of resistance to the rights protected by ORS 659A.145 or 659A.421
19 or federal housing law, or that a group of persons has been denied any of the
20 rights protected by ORS 659A.145 or 659A.421 or federal housing law, the
21 commissioner or the Attorney General may file a civil action on behalf of
22 the aggrieved persons in the same manner as a person or group of persons
23 may file a civil action under this section. In a civil action filed under this
24 subsection, the court may assess against the respondent, in addition to the
25 relief authorized under subsections (1) and (3) of this section, a civil penalty:

26 (a) In an amount not exceeding \$50,000 for a first violation; and

27 (b) In an amount not exceeding \$100,000 for any subsequent violation.

28 (10) In any action under subsection (1) of this section alleging a violation
29 of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing
30 law, when the commissioner is pursuing the action on behalf of an aggrieved

complainant, the court shall award reasonable attorney fees to the commissioner if the commissioner prevails in the action. The court may award reasonable attorney fees and expert witness fees incurred by a defendant that prevails in the action if the court determines that the commissioner had no objectively reasonable basis for asserting the claim or for appealing an adverse decision of the trial court.

(11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145 or 659A.421 or discrimination under federal housing law:

(a) "Aggrieved person" includes a person who believes that the person:

(A) Has been injured by an unlawful practice or discriminatory housing practice; or

(B) Will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(b) An aggrieved person in regard to issues to be determined in an action may intervene as of right in the action. The Attorney General may intervene in the action if the Attorney General certifies that the case is of general public importance. The court may allow an intervenor prevailing party costs and reasonable attorney fees at trial and on appeal.

APPROPRIATION LOAN

SECTION 52. There is appropriated to the Employment Department, for the biennium beginning July 1, 2019, out of the General Fund, the amount of \$_____, to enable the department to carry out the purposes of sections 1 to 47 of this 2019 Act.

SECTION 53. (1) The moneys appropriated under section 52 of this 2019 Act are continuously appropriated to the Employment Department to cover start-up costs related to the establishment of the paid family and medical leave insurance program under section 33?? of this

1 2019 Act.

2 (2) When the department determines that moneys in sufficient
3 amount are available in the Paid Family and Medical Leave Insurance
4 Fund established under section 39 of this 2019 Act, but in no event
5 later than January 1, 2023, the department shall reimburse the General
6 Fund, without interest, in an amount equal to the amount from the
7 General Fund appropriated as provided in section 52 of this 2019 Act.
8 The moneys used to reimburse the General Fund under this subsection
9 shall not be considered a budget item on which a limitation is other-
10 wise fixed by law, but shall be in addition to any specific biennial ap-
11 propriations or amounts authorized to be expended from continuously
12 appropriated moneys for any biennial period.

13 SECTION 54. Preemption. Sections 1 to 47 of this 2019 Act supersede
14 and preempt any rule, regulation, code or ordinance of any unit of a
15 local government, as defined in ORS 174.116, relating to paid family
16 and medical leave.

17 SECTION 55. The Director of the Employment Department shall
18 establish the family and medical leave insurance program under sec-
19 tion 33 of this 2019 Act such that eligible employees and employer may
20 begin making contributions to the program no later than January 1,
21 2023.

22 SECTION 56. Operative Dates. (1)(a) Sections 16 to 30 become oper-
23 ative on January 1, 2023.

24 (b) Sections 4 to 15, sections 31 and 32, sections 41 to 46 and the
25 amendments to ORS 659A.885 by sections 50 and 51 of this 2019 Act
26 become operative on January 1, 2024.

27 (2) The Employment Department and the Department of Revenue
28 may take any action before the operative dates specified in subsection
29 (1) of this section that is necessary to enable the departments to ex-
30 ercise, on or after the operative dates specified in subsection (1) of this

1 section, the duties, functions and powers conferred on the departments
2 by sections 1 to 47 of this 2019 Act.

3 **SECTION 57.** The section captions used in this 2019 Act are provided
4 only for the convenience of the reader and do not become part of the
5 statutory law of this state or express any legislative intent in the
6 enactment of this 2019 Act.

7 **SECTION 58.** This 2019 Act takes effect on the 91st day after the
8 date on which the 2019 regular session of the Eightieth Legislative
9 Assembly adjourns sine die.

10 _____